

Application No. 10/691,750
Amendment dated December 13, 2005
Reply to Office Action of July 13, 2005

REMARKS

This amendment is submitted in response to the final Official Action mailed July 13, 2005. In view of the above amendments to the specification, the enclosed Terminal Disclaimer, and the following remarks, reconsideration by the Examiner and allowance of the application are respectfully requested.

In the specification, Formula (VIIIa) was amended to restore both the $(X_2)_{Y2}$ group attached to the aryl structure and the R_{17} group. In addition, the $(CH_2)_n$ group was amended to read $(CH_2)_6$. The amendments do not introduce new matter.

For the reasons submitted below, the claims are believed to be in condition for allowance. The amendments and Terminal Disclaimer are believed to resolve the concerns raised by the Examiner. Accordingly, reconsideration is respectfully requested.

Turning to the Official Action, claims 1 – 34 were rejected for obviousness-type double patenting in view of certain claims of U.S. Patent No. 6,852,308. The Examiner indicated that this rejection could be overcome with the timely filing of a Terminal Disclaimer. This rejection is respectfully traversed in view of the enclosed Terminal Disclaimer for the following reasons.

Applicants do not concede the correctness of the Examiner's position. However, because the filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection nor an estoppel (see, MPEP §804.02 citing Quad Environmental technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991)), enclosed herewith is a Terminal Disclaimer in compliance with 37 C.F.R. §1.321(e) and disclaiming the term of any patent issuing on the present application extending beyond the term of the cited patent. In view of the enclosed Terminal Disclaimer, reconsideration by the Examiner and withdrawal of this rejection is respectfully requested.

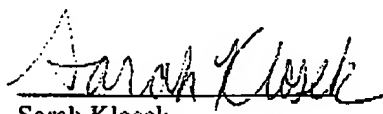
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Finally, the Examiner objected to the specification under 35 U.S.C. §132(a). The Examiner noted that Formula (VIIIa) as amended lacked the $(X_2)_{Y2}$ group attached to the aryl structure and the R_{17} group. In addition, the $(CH_2)_6$ group in the original structure was replaced with $(CH_2)_n$. This objection is respectfully traversed in view of the above amendment to the specification for the reasons set forth hereinafter.

The specification has been amended to restore the Formula (VIIIa) structure as it was originally filed. By amending the specification in this manner, this objection under 35 U.S.C. §132(a) for new matter has thus been overcome. Reconsideration by the Examiner and withdrawal of this objection is respectfully requested.

Finally, if there are any additional charges in connection with this response, the Examiner is authorized to charge applicant's deposit account number 19-5425 therefor.

Respectfully submitted,


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